



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

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| Date Amended: | 08/12/02 | Bill No: | AB 2701 |
| Tax: | Sales and Use | Author: | Wyman, et al. |
| Board Position: | Support | Related Bills: | SB 1869 (Chesbro) |

BILL SUMMARY

This bill would exclude from the definition of “gross receipts” and “sales price” the amount of any tax imposed by an Indian tribe, as specified, thereby excluding that amount from the computation of sales or use tax.

ANALYSIS

Current Law

Under existing law, the sales tax is imposed on the gross receipts from the sale of tangible personal property, unless specifically exempted by law. “Gross receipts” and “sales price” are terms defined in the law which include the total amount of the sale or lease or rental price, without any deduction on account of the cost of materials used, labor or service costs, interest charged, losses, or any other expenses related to the sale of the property. However, the following fees and taxes have specifically been excluded from the definition of “gross receipts” and “sales price”, thereby exempting these amounts from the computation of sales tax:

- Federal taxes (except most manufacturers’ or importers’ excise taxes).
- Local sales and use taxes when they are a stated percentage of the sales price.
- Certain state taxes or fees imposed on vehicles, mobilehomes or commercial coaches that have been added to, or are measured by a stated percentage of the sales price.
- State-imposed diesel fuel tax.

Proposed Law

This bill would amend Sections 6011 and 6012 of the Sales and Use Tax Law to specify that “gross receipts” and “sales price” do not include the amount of any tax imposed by any Indian tribe within California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

The bill would specify, however, that the exclusion would only apply to an Indian tribe that is in substantial compliance with the Sales and Use Tax Law.

The bill would become operative on the first day of the calendar quarter commencing more than 90 days after the bill is enacted.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

In General

Under the U. S. Constitution and subsequent U. S. law and treaties with Indian nations, Indians enjoy a unique form of sovereignty. The Commerce Clause of the U.S. Constitution recognizes Indian tribes as separate nations. These principles of federal law have been repeatedly reaffirmed by the Supreme Court. Thus, the sovereignty retained by tribes includes the power of regulating their internal and social relations, and this authority includes the power to make their own substantive law in internal matters and to enforce that law in their own forums. These rights include the right for tribes to, among other things, levy their own taxes on reservation lands.

As a result of these principles, state law generally does not apply to Indians on the reservation. Consistent with these principles, under the Board's Regulation 1616, with respect to sales of tangible personal property occurring on Indian reservations, California sales or use tax is only imposed upon the *non-Indian* purchaser. Whether or not the retailer is an Indian retailer or non-Indian retailer, the retailer is required to collect the tax and remit it to the state. However, sales tax does not apply to sales by either a non-Indian retailer or Indian retailer on sales made to Indians residing on the reservation.

Currently, none of the state- or locally-imposed sales or use taxes generated by sales made on Indian reservations are shared with any of the tribes. Therefore, in order for tribes to support tribal governmental services, including tribal courts, law enforcement, fire protection, water, sewer, solid waste, roads, and more, some tribes have resolved to levy their own retail sales tax.

COMMENTS

1. **Sponsor and Purpose.** The sponsors of this measure include the Chemiheuevi and Hopland Indian tribes. According to the author's office, the purpose of this measure is to exclude from the definition of *gross receipts* and *sales price* any retail sales tax imposed by an Indian tribe, as it is objectionable to apply the California sales or use tax on another tax.
2. **The August 12, 2002 amendments** were incorporated into the bill at the request of the Members of the Senate Revenue and Taxation Committee to specify that the proposed exclusion would not apply to an Indian tribe that is not in compliance with the Sales and Use Tax Law.
3. **The proposed exclusion would not complicate the Board's administration of the law.** It would, however, require retailers on Indian reservations to reprogram their cash registers to exclude any tribal tax portion charged to customers from the computation of sales or use tax.
4. **Related legislation.** Senator Chesbro introduced SB 1869 which is similar to this measure. The Board also voted to support SB 1869. The provisions, however, were amended out on April 23, 2002.

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COST ESTIMATE:

Some costs would be incurred in notifying affected retailers, answering inquiries, and amending the appropriate regulation, and revising returns. These costs are expected to be absorbable.

REVENUE ESTIMATE:**Background, Methodology, and Assumptions**

According to the California Nations Indian Gaming Association, Indian gaming in California accounted for \$48.6 million in state and local sales and use taxes in 1997. At the basic California state and local sales tax rate of 7.25%, these tax revenues would indicate taxable transactions of \$670 million. There are currently 45 Indian gaming facilities in California. While the Indian gaming facilities do not account for all of the taxable transactions on Indian reservations, they do account for the vast majority of such transactions.

In recent years, some Indian tribes have questioned the state's authority to require the tribes to collect use taxes on tangible personal property sold to non-Indians on reservation land. In a recent court case, the court found that the state could not require such collections for any tangible personal property have "reservation-based value". The effect of these issues on current collections of state and local sales and use taxes is not clear.

According to a survey done by Indian representatives, there are two tribes that are currently levying tribal taxes. The Chemehuevi Tribe is currently levying a 2% use tax on the sale, use or consumption of any product sold or used on the Chemehuevi Indian Reservation. Additionally, the Mojave Indians are levying a 6% use tax on any product sold or used on the Fort Mojave Indian Reservation. These tribes estimate that they collect about \$32,000 annually in state and local sales and use tax on these taxes.

Revenue Summary

The revenue loss from excluding from the state and local sales and use taxes the amount of tax imposed by any Indian tribe is estimated to be as follows:

| | <u>Revenue Loss</u> |
|---------------|---------------------|
| State (5%) | \$ 22,000 |
| Local (2.25%) | <u>10,000</u> |
| Total | <u>\$ 32,000</u> |

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